



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

February 18, 2021

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Re: *Morris v. Pompeo*, __ F. Supp. 3d __ (D. Nev. 2020) (No. 19-cv-569)

Dear Madam Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has decided not to seek further review of the above-referenced decision of the United States District Court for the District of Nevada. A copy of the decision is enclosed.

This case arose from the denial of the plaintiff's passport application. The plaintiff listed his sex as male on his application but included, among other supporting documentation, an original birth certificate listing his sex as female. Under a State Department policy adopted in 2010, "when an applicant indicates a gender on the 'sex' line on the passport application with information different from the one reflected on some or all of the submitted citizenship and/or identity evidence," 8 FAM 403.3-1(a), a physician must certify that the applicant "has had appropriate clinical treatment for gender transition" before the agency will issue a passport listing the new sex or gender, 8 FAM 403.3-2(B)(d)(5). The plaintiff asserted that he could not afford to seek treatment from a physician and thus would not provide that certification.

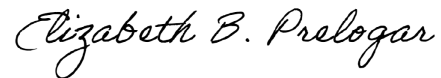
The district court found that requiring the plaintiff to comply with the physician-certification requirement would violate constitutional principles of equal protection. The court explained that "[i]f plaintiff were cisgender, he would not have to verify his gender identity beyond the submission of consistent identification corroborating his gender." Op. 15. Although the court acknowledged the government's important interest "in accurately representing the identities of U.S. citizens to foreign nations," Op. 17, it found that the government had not produced evidence demonstrating "an important interest in verifying a passport applicant's gender identity" in particular, Op. 16, and that even if it had, the physician-certification requirement would not significantly further that interest because "not all transgender persons receive or require physician treatment," Op. 17. The court also stressed that its decision should not be construed to mean that the State Department could not meet its burden to justify the physician-certification requirement, but rather held only that it had not done so in this case. Op. 17.

The Department of Justice defended the constitutionality of the State Department's policy in this case. But the district court's decision here resolves only an as-applied challenge based on the record before the court, and the decision has no precedential force. Moreover, the State

Department has informed the Department of Justice that it is currently reviewing its policy. Given those circumstances, we have determined that an appeal of the decision here is unwarranted.

The Department of Justice filed a protective notice of appeal on February 18, 2021, but we intend to dismiss the appeal on Monday, March 22, 2021. Please let me know if we can be of further assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth B. Prelogar".

Elizabeth B. Prelogar
Acting Solicitor General

Enclosure